

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**JOSE A. MARQUEZ dba JM TRUCKING
OF NORTHERN VA, LLC,**

Respondent.

**Docket No. FMCSA-2009-0260¹
(Eastern Service Center)**

**ORDER DENYING PETITION FOR RECONSIDERATION, DISMISSING
PROCEEDING, REMOVING STAY, AND CLOSING DOCKET**

1. Background

On July 13, 2009, a Notice of Claim was issued to Respondent, Jose A. Marquez dba JM Trucking of Northern VA, LLC, proposing a civil penalty of \$6,690 for three alleged violations of FMCSA's Federal Motor Carrier Safety Regulations (FMCSRs).² Specifically, the Notice of Claim, which stated that it was based on a July 2, 2009, compliance review, charged Respondent with: (a) one violation of 49 CFR 382.115(a), for failing to implement an alcohol and/or controlled substances testing program; and (b) two violations of 49 CFR 387.7(d), for failing to maintain required proof of financial responsibility at Respondent's principal place of business.³

On August 18, 2009, Claimant, the Field Administrator for FMCSA's Eastern Service Center, issued to Respondent a Notice of Default and Final Agency Order

¹ The prior case number of this matter was VA-2009-0317-US1274.

² Respondent placed only a portion of the Notice of Claim in the docket. Therefore, it is not clear whether the Notice of Claim was issued by the Virginia Division Administrator or the Field Administrator for the Eastern Service Center.

³ Because Respondent did not submit the entire Notice of Claim, the per-count civil penalty is not known.

(NDFAO) for failing to reply to the Notice of Claim within 30 days of its service. The NDFAO stated that the default causes the Notice of Claim to become the Final Agency Order, the effective date of which would be August 24, 2009. By letter dated August 20, 2009, Respondent requested reconsideration of the Final Agency Order. The Petition for Reconsideration (Petition), the filing of which acted as a stay on these proceedings,⁴ did not contain a certificate of service, as required by 49 CFR 386.6(c); nor did Respondent serve Claimant with the pleading, as required by 49 CFR 386.6(a).⁵

2. Decision

A party submitting a pleading that has been properly served⁶ without the required certificate of service will be given an opportunity by the U.S. Department of Transportation's Docket Operations to rectify the omission.⁷ If the pleading is resubmitted with the required certificate of service, the pleading will be docketed and considered. Here, because Respondent did not serve Claimant with the Petition, Respondent will not be given the opportunity to resubmit its pleading with the required certificate of service.

THEREFORE, Respondent's Petition is denied, the proceeding is dismissed, and the stay is removed. The Notice of Claim is the Final Agency Order in this proceeding,

⁴ See 49 CFR 386.64(a).

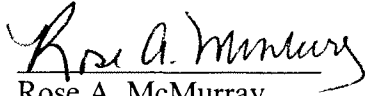
⁵ See Memo to Docket from Adjudications Counsel, November 13, 2009.

⁶ FMCSA's Adjudications Counsel will make that determination.

⁷ See, e.g., *In the Matter of Gajda Trucking Company*, Docket No. FMCSA-2009-0276, letter rejecting pleading from the Program Manager, Docket Operations, October 7, 2009.

and this docket is closed.⁸

It Is So Ordered.



Rose A. McMurray

Assistant Administrator

Federal Motor Carrier Safety Administration

11-24-09

Date

⁸ The August 18, 2009, NDFAO stated that the \$6,690 civil penalty was due and payable on August 24, 2009, the date that the Notice of Claim was to become the Final Agency Order. Although there is no record of the initial receipt of the Petition by Docket Operations, we will assume that it was received on August 22nd, which would have been two days before the effective date of the Final Agency Order. Thus, the filing of the Petition on August 22nd, the date of receipt by Docket Operations (see 49 CFR 386.8(b)(2)) would have stayed the proceedings at that point. With the stay now removed, there are again two days remaining to the effective date. As a result, the civil penalty is due and payable two days following the service date of this Order. (Five days are added to this period in accordance with 49 CFR 386.8(c)(3) because this Order is being served by mail.) Respondent should consult the NDFAO for payment instructions.

CERTIFICATE OF SERVICE

This is to certify that on this 30 day of November, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

| | |
|---|-----------|
| Jose A. Marquez, Owner | One Copy |
| Jose A. Marquez dba JM Trucking of Northern VA, LLC | U.S. Mail |
| 8400 Leaf Road | |
| Alexandria, VA 22309 | |

| | |
|---|-----------|
| John C. Bell, Esq. | One Copy |
| Trial Attorney | U.S. Mail |
| Office of Chief Counsel (MC-CCE) | |
| Federal Motor Carrier Safety Administration | |
| 802 Cromwell Park Drive, Suite N | |
| Glen Burnie, MD 21061 | |

| | |
|---|-----------|
| Robert W. Miller | One Copy |
| Field Administrator | U.S. Mail |
| Eastern Service Center | |
| Federal Motor Carrier Safety Administration | |
| 802 Cromwell Park Drive, Suite N | |
| Glen Burnie, MD 21061 | |

| | |
|--|-----------|
| Craig A. Feister | One Copy |
| Virginia Division Administrator | U.S. Mail |
| 400 N. 8 th Street, Suite 780 | |
| Richmond, VA 23219-4827 | |

| | |
|-----------------------------------|-------------------|
| U.S. Department of Transportation | Original |
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